

National Compliance Assistance Providers Forum *“Optimizing Resources for Environmental Results”*

December 3-6, 2002
San Antonio, Texas

Panel Discussion: Where Are We Headed in Compliance Assistance?

Mr. Edward introduced Mike Stahl, the moderator for the panel discussion. Mike Stahl is currently serving as Director, Office of Compliance at the U.S. Environmental Protection Agency in Washington DC. He is one of the Agency's senior officials responsible for directing EPA's programs to assure compliance with the nation's environmental laws and regulations.

Mr. Stahl welcomed participants and thanked everyone for coming to and participating in the Forum. He discussed the purpose of the panel – getting a perspective of where compliance assistance is now and where it is going. He then made brief introductory remarks about each panelist.

1. **Sam Coleman** – Director, Compliance Assurance and Enforcement Division, U.S. Environmental Protection Agency, Region 6
2. **Leonard Spearman** – Deputy Director, Office of Compliance and Enforcement, Texas Commission on Environmental Quality
3. **Richard Sustich** – Assistant Director of Research and Development, Metropolitan Water Reclamation District of Greater Chicago, Co-Chair, Compliance Assistance Advisory Committee
4. **La Ronda Bowen-Fruin** – Principal, Bowen & Associates, Co-Chair, Compliance Assistance Advisory Committee
5. **John Peter (J.P.) Suarez** – Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency

Mr. Sam Coleman

Mr. Coleman began by stating the two main compliance assistance goals: advancing compliance assistance practices and increasing compliance at regulated facilities. He discussed ways of advancing compliance assistance practices through outreach and measurement. He encouraged moving forward using the Web as a tool to encourage these practices. He also stressed the need to ensure all people have the right information, the right tools and ways to measure their progress.

He noted that outreach and measurement were keys to success. He discussed three areas of outreach: awareness, tools for compliance and continued improvement. He stressed the need to keep the regulated community up to date and aware of compliance assistance tools, as compliance assistance is a constantly changing arena. Mr. Coleman then commented on two tools that are important to where compliance assistance is and where it is going. The first is using technology such as the Web to make sure people have the information they need. The

second tool he discussed was the Compliance Assistance Clearinghouse. He then stressed the importance of continued improvement. He noted the need to keep the ball rolling and not get stuck on a plateau, to continue to make things better.

Mr. Coleman then discussed the need to measure progress. He emphasized the need to know what you are trying to achieve – what your end point is. He noted the need for customer service councils and the need for customer service in compliance assistance. The importance of incremental improvement as a momentum builder was noted. Mr. Coleman stressed the need to assess true success and progress.

Mr. Coleman closed by stating that outreach and measurement are two basic themes for all of Region 6's future endeavors in the area of compliance assistance.

Leonard Spearman

Mr. Spearman began by welcoming participants to Texas. He discussed his role as Deputy Director with Office of Enforcement and Compliance Assurance at Texas Commission on Environmental Quality. He acknowledged the challenges of compliance and enforcement, particularly when inspectors carry out both roles. He noted that in Texas this is working well. He emphasized communication is key to working well together and to establishing good relationships.

Mr. Spearman outlined the history of compliance and enforcement in Texas. He discussed the procedures and practices that were developed to ensure compliance and enforcement worked together. A plan was developed that looked at what needed to be done, what needed to be inspected, who needed to be involved and kept informed, and each area's specific issues.

Mr. Spearman commented on the success of efforts on House Bill 2912, which is a compliance assistance outreach bill. It is one of the first in country to put a compliance history on the internet for every regulated industry by September 2003. This would include notice of violations and enforcement actions as well as rate every regulated industry as either poor, average, or high.

Mr. Spearman concluded his presentation by highlighting a number of achievements in the area of compliance assistance, which were documented in the Texas Commission on Environmental Quality FY2002, Environmental Assistance Report: Preventing Pollution, Conserving Resources, and Achieving Compliance (part of a Biennial Report to the 78th Legislature). These included:

1. *Integrating EMS systems fully.* TCEQ is adopting a comprehensive program that provides regulatory incentives to encourage the voluntary use of environmental management systems (EMSs) by regulated entities, state agencies, local government entities and others.
2. *Increasing demand for technical and on-site assistance from regulated entities including small business and government entities.* Responded to more than 10,000 calls from small businesses and local governments and coordinated almost 600 site visits to answer questions on compliance.

3. *Providing various resources, training, and technical assistance in locating and accessing markets for compost, recyclable materials.*
4. *Training more than 10,000 small business and local governments through workshops and presentations.*
5. *Training more than 6,000 regulated entities at various workshops and seminars.*
6. *Equipping 300 teachers to teach environmental subjects to students.*
7. *Providing awards and special events to annually recognize who conserve natural resources and prevent pollution.*

Mr. Richard Sustich

On behalf of the Compliance Assistance Advisory Committee, Mr. Sustich welcomed all to the third National Compliance Assistance Providers Forum. He asked all of the members of the CAAC to stand and encouraged everyone at the Forum to select at least one of the CAAC members to talk to during their time at the Forum. He stated that the CAAC was at the Forum to listen, to capture participants' expertise and experiences, and to get input that would help them make the best possible recommendations to EPA on improving compliance assistance.

He strongly urged everyone to attend the various CAAC listening sessions that would be held throughout the Forum, especially the one on measurement. Mr. Sustich stressed the importance of measurement as it is an essential activity to convince those who control the purse strings that compliance assistance is having an impact. He emphasized the need for participants to share comments with the CAAC members. The CAAC wants to know what makes your programs a success or, in some instances, impedes opportunities for success, so that the CAAC can share these successes with other Compliance Assistance providers and with EPA.

Mr. Sustich then remarked on the history of the CAAC. He chaired the previous CAAC that in August of 2001, issued a set of recommendations to EPA for enhancing compliance assistance opportunities at EPA and throughout the compliance assistance community. Those recommendations addressed six broad themes:

1. incorporating compliance assistance into EPA's Mission, Goals and Strategic Plan;
2. institutionalizing and implementing compliance assistance throughout the Agency;
3. addressing compliance assistance in the development stage of new regulations;
4. strengthening the compliance assistance network;
5. developing and delivering effective compliance assistance tools; and
6. measuring the effectiveness of CA efforts.

He noted the strategic approach to compliance assistance that EPA has embarked upon encompasses many of the prior CAAC's recommendations. On behalf of the CAAC, Mr. Sustich thanked EPA.

One of the more visionary recommendations from the prior CAAC was the recommendation that EPA adopt a broader, more holistic approach to what the CAAC had termed "environmental

assistance," recognizing that compliance assistance is part of a much larger spectrum of environmental activities, including technical assistance, technology diffusion, pollution prevention, environmental management systems, even economic incentives and of course, strong traditional enforcement. As EPA's and the CAAC's efforts to develop integrated strategies using all of these activities matures, compliance assistance will also come of age as a powerful tool in its own right for improving environmental performance.

Mr. Sustich noted his hope that EPA will continue to use the CAAC's recommendations as it moves forward to develop its Strategic Plan for the future. He also hoped that all Forum participants follow the process, and help ensure that compliance assistance is featured throughout the Strategic Plan.

Mr. Sustich remarked there are other reasons why compliance assistance will, and must, supplant traditional enforcement as the primary tool for improving environmental performance, at least in certain areas. Just two months ago, President Bush declared this the "Year of Clean Water," in celebration of the 30th anniversary of the Clean Water Act. Mr. Sustich noted there is much to celebrate in the water arena. But there is a different, subtler crisis looming ahead, and that is the crisis of regulatory success. Environmental statutes, like other regulatory systems, define the bounds of acceptable behavior. When someone steps outside the bounds, they can and should expect prompt, responsible enforcement action to bring them back into compliance. While we can and frequently do debate what tool or device is most appropriate to accomplish this, we all recognize that the goal is to bring the offending party into compliance with regulations.

However, in the environmental arena, compliance is synonymous with acceptable performance, not perfection. Inside the bounds, there are often additional opportunities for environmental improvement. But inside the bounds is also precisely where traditional monitoring and enforcement cease to motivate improved environmental performance. Even traditional incentives, such as audit policies that minimize exposure to liability when noncompliance is promptly reported, do not play a role here. Could we move the bar by some increment so that those who had achieved compliance are now in violation? Certainly, but at what cost? In the water program, the debate over the metal products and machinery rule has gone on for more than eight years and at a cost of millions of dollars.

The reality is, "When everyone is in compliance, only 'beyond compliance' tools will be effective." Surely, we must preserve and keep sharp, all the other tools in the toolbox, and use them when appropriate, but improving environmental performance is becoming the labor of partners, not adversaries, and it is you, the compliance assistance community, that must fulfill that role.

Mr. Sustich noted a second reason for the emergence of compliance assistance as the primary tool for environmental improvement is the nature of the environmental issues that will need to be faced in the future. The truth is that the low hanging fruit has already been picked. At the same time, the environment is far more complex than imagined 30 years ago. So what are the issues that we will need to address? In its "Innovations Strategy" published in 2000, the Agency

identified four major environmental problem areas that we will face in the coming decades: reducing greenhouse gas emissions, reducing smog components, water quality protection and restoration, and water infrastructure.

When one looks at each of these environmental problems, it is quickly evident that none can be effectively managed through traditional approaches. Contributing causes and sources are diffuse and numerous, and effective emissions reductions and progress will only be accomplished by impacting the lifestyles of all Americans. To address these environmental problems, EPA won't be reaching out to the traditional compliance assistance customers; EPA will need to retool the CA network to reach a new and even more novel customer--the American public.

Mr. Sustich noted that on Friday, the role of the compliance assistance community in homeland security will be discussed. He suggested that compliance assistance does have a vital role in the war on terrorism. When we look back on September 11, remember that no one, not the airlines, nor the pilots or flight crew or passengers, nor the architects or building managers or occupants of the buildings, had been in noncompliance with a regulation that contributed to the disasters of that day. No amount of enforcement against the victims could have prevented what happened. As we, as a nation, look to preempt the next attack, our role as compliance assistance providers will be to work in partnership with our customers, to look beyond the bounds of regulation, to optimize not just their environmental performance, but every aspect of their business, so as to take away from those that would harm us anything that might become a weapon of environmental terrorism.

In closing, Mr. Sustich commented that the future of compliance assistance will be challenging. He emphasized the need to be bold and innovative, and persistent, not just in developing and delivering the assistance the regulated community will need, but in working with them as partners, to ensure that environmental performance becomes the marrow of their business. Mr. Sustich ended by asking participants, "Will we be ready?"

La Ronda Bowen-Fruin

Ms. Bowen-Fruin welcomed participants on behalf of the CAAC. She encouraged participants to attend the 3:15 breakout session called "Bridging the Gap Between Business Owners and Those Who Regulate Them."

Ms. Bowen-Fruin commented that she has been on all three sides of the compliance assistance issue: a business owner, a regulator and compliance assistance provider. She commented that many look at compliance assistance one way and do not look at it as a complete circle. When looking at compliance assistance differently, there is a lot that can be learned from small businesses. She then demonstrated this point by giving an example of a lesson that was learned from a BBQ restaurant (small business). The BBQ restaurant had an underfire pit BBQ. Regulators required that small businesses provide an ESP. The BBQ restaurant warned that an ESP would create a fire. The regulators insisted that it was required, even though a meeting was held where both the restaurant and local fire officials stated they thought it could cause a fire. After the ESP was installed, the restaurant burned down. Ms. Bowen-Fruin emphasized the need

to learn to listen and to go beyond traditional thinking. She asked participants to forget whatever "hat" they had come in with and to have an open mind and think outside the box.

Ms. Bowen-Fruin discussed what she called the three "C"s of Compliance. The first was compassion. She talked about the need for a clear and compassionate vision of an environmental outcome. She noted the need to have knowledge and one way to have knowledge is to build trust, which takes time. The second "C" was courage. Once the big picture outcomes for compliance assistance are identified, there is a need to build relationships with all stakeholders involved to achieve them. Solid, long-term relationships are needed to achieve environmental outcomes. She noted that it sometimes takes courage to do this. The third "C" is common sense. She stressed that when we see something is not working, or the structure is not working, we must stop and change it. There is a need to identify how things could be done differently. The future of compliance assistance is dependent on the three "C"s.

Mr. Stahl asked Mr. Suarez if he would like to make any additional remarks before the questions and answer session started. Mr. Suarez noted that a major challenge for agencies and regulators is the need for common sense. There are times when everyone recognizes the problem but does not pull back and use common sense. Everyone needs to ask is it working, if not, stop doing it and do something else.

Mr. Stahl then invited participants to ask questions of the panelists.

Questions and Answers

95% of raw sewage was disposed in rivers 30 years ago. Yet when I listen to Ms. Bowen-Fruin, I think about the death of common sense. There is a need to apply resources about what makes the most sense. Politics gets in the way of what matters. Do you think we should focus on real scientific facts or continue to let politics get in the way?

Mr. Coleman noted the need to be careful that we don't lose consistency when applying common sense. Mr. Suarez added that Ms. Whitman focuses on using science. The Agency and decisions are driven by sound science. He also commented that science helps us form questions we need to ask.

Regulators don't always understand business. How can industry help EPA understand? How would EPA like to receive this information?

Mr. Coleman shared that his father ran his own business, so he has significant background in small business. From a format perspective, you need to be clear about what a business needs to make a profit and operate successfully and communicate that to regulators. There is a need to understand individual business concerns, how do you use raw materials, processes, labor etc. In our Region, we have expertise to work with businesses. Mr. Sustich expressed the need to remind regulators that they are your customers just as businesses are the customers of regulators. We provide all manner of services. We forget you are our customers. You need to get our attention first. Our job is to serve that need. Leonard Spearman added that before they send out their inspectors, they require that inspectors learn the company and business, look at annual reports, etc in the library. Texas has tried to train staff in the different types of industries, what

they are doing, how they function etc.

There is a major issue with south coast air quality. You stated that Ms. Whitman wants to use good science.....Section 1401 and code 1421 are about to put 800 dry cleaners out of business. It will prevent new dry cleaners from opening. This issue was discussed in a recent Washington Post article. Can comment on this?

Mr. Suarez stated that he was not familiar with the particular issue in the south coast, but that he would go back and talk to the staff in the Office of Air and Radiation and the states. Ms. Bowen-Fruin responded that the south coast has much more stringent regulations than in other parts of the county.

How do we change the national dialogue on what matters? The media states that lack of enforcement is a problem, not a success story.

Mr. Suarez responded that this comes down to basic communication. This is a result of not being able to put in context what we are doing and not having information available about all the things that are being done. There is a need for information on the state of the environment. The issue is not the number of enforcement actions but the state of the watershed, the river etc. The politics are not going to change. There is nothing that we can do that will satisfy everyone. We need to have the courage to say that compliance assistance is the right way to go on certain issues rather than enforcement. If we have a story to tell besides enforcement then we can change the dialogue for a while.

Mr. Edward thanked the presenters. He concluded the plenary session by summarizing the the composition of participants at the Forum, which included representatives from 25 different state and regional agencies, 20 local governments, 9 federal agencies, and 13 different academic institutions. He noted that a third of participants were from the private sector including trade associations and industry representatives.